



EXHIBIT #4
DATE Jan 25th
197

2011 Legislative Session
House State Administration
January 26, 2011
Melanie Symons, Chief Legal Counsel
Montana Public Employees' Retirement Board

HB 197

Testimony before the House State Administration Committee
Opposing House Bill 197
January 26, 2011

- House Bill 197 proposes to amend Article II, section 31, of the Constitution of the State of Montana to permit the reduction of a member's current or future retirement benefit in order to maintain the actuarial soundness of the retirement system (proposed new language underlined):

"Section 31. Ex post facto, obligation of contracts, and irrevocable privileges -- public retirement plan contract modification allowed. No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature. However, in order to maintain the actuarial soundness of a public retirement plan, the legislature may modify a public retirement plan and the public retirement plan contracts as they apply to individuals who are already members of the plan."

*"Maintain the actuarial soundness" is perhaps a vague term

Maintain = "keep in an existing state"

If the system isn't actuarially sound, does it apply?

Actuarial soundness = who determines?

Board

Legislature

Court

*"Member" under our definitions includes retirees.

- The one positive aspect of this bill is its recognition that retirement system members have a contract right to their retirement benefit
- The contract right for PERB-administered systems is recognized at 19-2-502(2), MCA, as starting on the first day of covered employment. The contract can be enhanced by the legislature.
- Pursuant to the impairment of contract clauses in the Montana and the United States Constitution, a member's retirement benefit cannot be reduced or impaired.
Montana Const. Art. II Sec. 31
U.S. Const. Art. I, Sec. 10

- Even if HB 197 passes, the United States Constitution will prohibit application of the amendment to any public employee who became a member of a retirement plan prior to the effective date of the Amendment – July 1, 2013 pursuant to section 13-27-1-05(2), MCA.
- Any statutes that impair or reduce retirement benefits will also not apply to an employee who became a member of a retirement plan prior to the effective date of that amendment – generally October 1 of the year in which the amendment is passed.
- Whether the Constitution is amended or statutes are amended, lawsuits will be filed challenging the reduction of an existing member or retiree's benefits.
- Given that the end result of either a constitutional amendment or a statutory change will be the same, the Public Employees' Retirement Board fails to understand the preference for a Constitutional Amendment.
- As the Constitutional Amendment with respect to term limits has proven, it is nearly impossible to "undo" a referendum.
- The Board questions whether this Legislature, and particularly this Committee, wishes to set a precedent for using the Montana Constitution to renege on its citizens' well-established contract and property rights.

The Public Employees' Retirement Board urges a "no" vote on HB 197.

Thank you.